IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4315 OF 2006
WITH
WRIT PETITION NO.4316 OF 2006

Mahadeo Shivmurti Hiremath
since deceased through LRs ..Petitioners.

Vs.

Ajitsinh Dattatraya Ghatge & anr. ..Respondents.

...

Mr. D.S. Sawant for the Petitioners.
Mr. P.L. Naik for Respondent No.1.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

10th July, 2006.

P.C. :

1. A decree for eviction has been passed on the ground that (i) The premises were required reasonably and bonafide by the landlord for the use and occupation of the members of his family and (ii) A permanent construction has unauthorizedly been carried out without the permission in writing of the landlord.

2. In so far as the ground of bonafide requirement is concerned, the judgment of the Appellate Court does not suffer

from any error. D.W. 1 stepped into the witness box and he stated that he himself and his brother have children who are receiving education in a college and High School at Kolhapur. The children are required to commute every day from Kagal to Kolhapur. Their requirement could be met if the suit premises are made available to the landlords. The premises on the first floor were not found to be in a habitable condition. The evidence on the side of the landlords has been accepted as trustworthy and credible. That apart, the factor of comparative hardship weighed against the tenant because it is an admitted position that the tenant had constructed a building on CTS 2315 which belongs to him, and consisting of 26 rooms. In the circumstances, no case for interference in respect of the finding on the ground of bonafide requirement is made out.

3. In so far as the permanent construction is concerned, the evidence of the landlord was that the tenant had constructed a shed admeasuring 15 ft x 8 ft on an area which was an open space. In the course of his cross examination Petitioner No.3 specifically admitted that the area in which the shed has been constructed was open and that at present a new shed admeasuring 15 ft x 8 ft has been constructed thereon. In the circumstances,

the appreciation of evidence by the Appellate Court does not suffer from any error.

4. Having regard to all the facts and circumstances of the case, no case for interference is made out. The Petitions are dismissed. However, time to vacate the premises is granted to the Petitioners until 30th September, 2006 subject to the filing of the usual undertaking of all the adult members of the family within a period of two weeks from today.